

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CUSHMAN, Minors.

UNPUBLISHED
November 10, 2015

No. 327254
Oakland Circuit Court
Family Division
LC No. 13-810540-NA

Before: SAWYER, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent pleaded no contest to the allegations in the petition, which sought termination based on her noncompliance with the requirements of the parent/agency agreement concerning services and drug screens, lack of housing, and continued use of heroin and cocaine. The court accepted her plea and found clear and convincing evidence to support the statutory grounds for termination. The court ordered that respondent be psychologically evaluated and subsequently conducted a hearing regarding the children's best interests. After the hearing, the trial court determined that termination was in the children's best interests, and terminated respondent's parental rights.

On appeal, respondent's claims relate to the best interests hearing and determination by the trial court. Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's best-interest decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007).

When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted). Further, the court may consider whether the parent can provide a permanent, safe, and stable home, *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012) and the length of time the child may be required to wait for a parent to

rectify her issues, *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991). “The trial court may also consider a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Respondent first contends that the trial court committed reversible error during the best-interests hearing by denying her the opportunity to call a witness regarding the appropriateness of her housing and by limiting closing arguments to two minutes for each party. We disagree.

Generally, it is the “duty of the judge to control all proceedings during the trial, and to limit the introduction of evidence and the argument of counsel to relevant and material matters, with a view to the expeditious and effective ascertainment of the truth regarding the matters involved.” See MCL 768.29. “[T]he trial court has the responsibility to control the introduction of evidence and the arguments of counsel and to limit them to relevant and material matters.” *Tobin v Providence Hosp*, 244 Mich App 626, 640; 624 NW2d 548 (2001). An error in the exclusion of evidence or a defect in anything done by the trial court is not grounds for a new trial or disturbing a judgment unless it was inconsistent with substantial justice. MCR 2.613(A).

Respondent’s first claim of error relates to her ability to call a witness at the best interests hearing. At the hearing, respondent asked to call a witness to testify that respondent had appropriate housing. The trial court held that appropriate housing related to the statutory grounds for termination, and not the children’s best interests. However, at the best interests phase, relevant considerations include the parent’s compliance with his or her case service plan, *In re White*, 303 Mich App at 714, whether the parent can provide a permanent, safe, and stable home, *In re Frey*, 297 Mich App at 248-249, and the length of time the child may be required to wait for a parent to rectify her issues, *In re McIntyre*, 192 Mich App at 52-53. Respondent’s housing situation was relevant to these issues. However, we do not agree that the trial court’s refusal to allow the witness to testify constituted reversible error.

Initially, we agree with the trial court that the issue of whether respondent complied with her case service plan was not in dispute at the hearing, as respondent had previously pled to being noncompliant with her plan. Furthermore, the specific evidence respondent wished to admit was cumulative and undisputed. At the hearing, respondent’s case worker testified that she had visited respondent’s housing and deemed it appropriate. According to the case worker, the homeowner had expressed a willingness to draft a lease agreement, but she had never been provided with a lease agreement. Respondent testified that the homeowner was willing to enter into a written lease agreement. Based on this testimony, we fail to see how presentation of the witness was necessary. The case worker had testified that housing was appropriate, but that there was no written lease. Both respondent and the caseworker testified that the homeowner was willing to enter into a lease. This evidence was sufficient to establish the appropriateness of respondent’s housing, and we are not convinced that the witness’s testimony would have been anything more than cumulative evidence. There was no indication that an actual lease existed at the time of the hearing, or that the witness could have testified to the existence of a lease. Accordingly, respondent is not entitled to relief on this ground. MCR 2.613(A).

Respondent next asserts that the trial court erred in limiting closing arguments to two minutes. MCR 2.507(F) provides:

Time Allowed for Opening Statements and Final Arguments. The court may limit the time allowed each party for opening statements and final arguments. It shall give the parties adequate time for argument, having due regard for the complexity of the action, and may make separate time allowances for co-parties whose interests are adverse.

Here, we disagree that the trial court abused its discretion in limiting closing arguments. Given the length of the proceedings, the trial court was very familiar with the history of the case. Further, respondent has not stated what her attorney would have argued if given more time that the trial court did not know or consider. See MCR 2.613(A). Accordingly, we do not agree that the trial court committed reversible error.¹

Respondent next argues that the trial court erred in determining that termination was in the children's best interests. Specifically, respondent claims that the court failed to consider the strong bond between respondent and the children, and failed to make specific findings on the best interests of each child as required in *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012). We disagree.

Initially, respondent is mistaken when she contends that the court did not consider the strong bond between her and the children. The court explicitly stated, "[T]his is a really sad matter in regards to the fact that we have two children who actually are bonded with their mom" and were looking forward to being reunited with her. However, despite the evidence of the bond between respondent and the children, the evidence also showed that the proceedings had lasted two years, and during that time respondent had consistently made poor decisions regarding her children and exhibited consistent substance abuse problems. Respondent's case worker testified that it was in the best interests of the children for respondent's rights to be terminated. Further, a psychological evaluation was conducted, and the psychologist opined that respondent was manipulative, self-focused, exhibited dependency needs, and had difficulty putting the needs of others before her own. Accordingly, the evidence supported the trial court finding that termination was in the children's best interests. We further reject respondent's claim that the trial court's finding was based on an incomplete record. Specifically, respondent claims that the psychologist should have observed the children with respondent and evaluated the children to determine the effect of termination on the children. However, again, there was no dispute that respondent was bonded with the children and that termination would be difficult. Despite that, a preponderance of the evidence still established that termination of parental rights was in the children's best interests.

¹ We realize that it is within the discretion of the trial court to limit the time for closing arguments, and while there was no abuse of discretion here, we note that two minutes for closing arguments would be insufficient in most cases.

We further do not agree that the trial court failed to make specific findings on the best interests of each child as required in *In re Olive/Metts*. The *In re Olive/Metts* Court held that the trial court has “a duty to decide the best interests of each child individually when determining whether termination of parental rights is in that child’s best interests.” *Id.* at 42. In *In re White*, 303 Mich App at 715-716, the Court held:

We conclude that this Court’s decision in *In re Olive/Metts* stands for the proposition that, if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children’s best interests. It does not stand for the proposition that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child’s best interests. [Emphasis in original.]

In this case, the trial court specifically referenced both children during its best interests determination. While its factual findings overlapped, there was no evidence that the interests of the children differed significantly. Therefore, remand for the trial court to articulate specific findings regarding each child is not required.

Affirmed.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood